IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1610 OF 2007

Chandrashekhar @ Chandra Muttapa Rao @ Chandra Poojari. ...Applicant.

Versus

The State of Maharashtra ...Respondent.

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Mr.N.N.Gawankar i/b. Arfan Sait, Adv. for the Applicant.
Mr.K.V.Saste, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 11th June, 2007.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. The applicant is seeking bail in C.R.No.149 of 2006 of DCB, CID, Mumabi (earlier C.R.No.447 of 2006 of Dindoshi Police Station. The said case pertains to MCOC Special Case No.8 of 2007. The said case is mainly under Sections 387, 468, 120(B) of IPC, read with Sections 3(1(ii), 3(2), 3(4), 3(5) of MCOC Act, 1999.

3. It is the prosecution case that the complainant was doing business as a builder. On

8.10.2006 he received a telephone call wherein the caller introduced himself as ‘Guru Satam’. The caller said, "Mai Guru Satam bol raha hu, hum log ko diwali chahiye, Chokre log ko diwali dena padata hai". The complainant asked him as who is Guru Satam then the caller told him, "Mai kyon hu yeh tuze batata hu" and switched off the phone. After two days the complainant received another call on his mobile phone, the caller identified himself as Raju and said "Tu bhai ko kyon Guru Satam puchata hai kya? ....., bhai abi bahut bhadak gaya hai, abi tereko udaneka mere ko order diya hai". He threatened and asked the complainant, "Bhai ko kitna dega ye bata?" and he disconnected the phone. Thereafter sometime after diwali, the complainant again received a telephone call. The caller identified himself as Raju, he abused the complainant and gave him one overseas telephone number 0027726917878 and told the complainant to contact Guru Satam on the said phone. Thereafter, the complainant again received a telephone call on his mobile number. The screen displayed ‘Unknown number’ and the caller identified himself as Guru Satam and said, "Hum do-char hajar ki bhik nahi mangte, tu pach peti (Rs.5 lakhs) Raju ke pass dena...." The caller

further threatened that if the money is not paid the complainant would be shot.

4. On apprehending danger to his life the complainant approached Anti-Extortion Cell of DCB CID, Mumbai and informed them about the incident. His statement was recorded. In his statement he has also mentioned that the telephone calls made to him by Raju were made from PCOs by two different persons. It is the case of the complainant that the telephone call made sometime after Diwali i.e. towards the end of October, was made by the present applicant. The said complaint was treated as FIR and C.R.No.447 of 2006 came to be registered by Dindoshi Police Station. Thereafter, the investigation was carried out by DCB, CID, Unit-IV, Mumbai. The applicant came to be arrested on 7.12.2006 and from his residence mobile phones with sim-cards and other articles came to be seized.

5. During the course of investigation it came to light that the applicant and other coaccused in the case are the members of the organised crime syndicate headed by the wanted accused Guru Satam. They are indulging in commission of extortion by

threatening builders who are doing development work under the SRA Scheme.

6. The investigation revealed that the applicant has taken active part in continuing the unlawful activities and commission of organised crime on behalf of the above organised crime syndicate headed by wanted accused Guru Satam. The investigation revealed that applicant had made a telephone call to the complainant and at that time, he gave his name as Raju. It is the prosecution case that the call made to the complainant in the end of October, 2006 was made by the present applicant. During the said call the present applicant abused the complainant and asked him as to why he was not taking the telephone calls of "Bhai" (i.e. Guru Satam). Thereafter the applicant told the complainant that he is giving a telephone number and the complainant should call Guru Bhai. Thereafter, he gave one telephone number and told the complainant that he should contact Guru Satam on that telephone number.

7. Mr.Gawankar, has submitted that if one peruses the conversations which took place between

the present applicant and the complainant in the end of October, 2006, it cannot be said that any attempt was made by the applicant to extort any money from the complainant or that the applicant threatened the complainant and demanded that the complainant should give any amount to him or Guru Satam. Mr.Gawankar has stated that if the said conversation is perused it does not reveal that the applicant put any fear of death or grievous hurt in order to commit extortion and hence Section 387 of IPC would not be attracted. Mr.Gawankar further submitted that if the initial offence under the Indian Penal Code fails, the provisions of the MCOC Act would not be attracted to the case of the applicant and hence the applicant deserves to be released on bail.

8. Mr.Saste, the learned APP has contended that the provisions of the MCOC Act are squarely attracted in the present case. In support of his contention, he has placed reliance on the fact that the mobile printouts relating to the mobile of the applicant has disclosed that the applicant was in constant contact with wanted accused Guru Satam and the other accused persons. The confessional statement of coaccused Bhushan Satam

clearly shows that the applicant who is an active member of the organised crime syndicate headed by Guru Satam, has actively participated in extortion by the above organised crime syndicate headed by Guru Satam. Coaccused Bhushan Satam is the son of the main accused Guru Satam. Coaccused Bhushan Satam has stated in his confessional statement that the present applicant used to work at the behest of his father Guru Satam and the applicant used to call-up builders at the behest of his father and used to give threats on telephone to the builders and at that time the applicant used to give his name as Raju. Besides this, the confessional statement of the present applicant is also on record.

9. Mr.Gawankar submitted that the statement of the applicant as well as coaccused -Bhushan Satam have been retracted. It is well settled that even a retracted confessional statement can be relied upon by the Court provided that there is some material to corroborate the same.

10. With regard to the material that the applicant had conversations on telephone with the complainant in the end of October, 2006,

Mr.Gawankar submitted that the said conversation does not make out a case of extortion. He submitted that no demand has been made by the applicant nor was any threat given by the applicant to the complainant. The said telephone conversations cannot be said to be as innocuous as it is made out to be by the learned Advocate for the applicant, because while considering the said telephone conversation, the sequence of the earlier telephone calls received by the complainant and the conversations therein is to be seen. The conversation of the applicant and the complainant has to be appreciated in the light of those previous telephone calls and the conversations therein. From all the previous telephone calls and conversations therein, and the conversation by the applicant with the complainant, it is clear that the applicant was continuing the earlier threats and demands for money made by the other accused on behalf of Guru Satam.

11. Thereafter the learned APP submitted that the complainant has identified the voice of the applicant. However, Mr.Gawankar has submitted that the statement of the complainant in respect

of identifying the voice of the applicant is dated 5.2.2007 on which date the applicant was in jail custody and hence it is not possible for the complainant to see the applicant and identify his voice on that day. Mr.Saste, the learned APP has offered some explanation in answer to this contention. However, I find that even if this material is excluded from consideration, there is sufficient material which shows the complicity of the present applicant in an offence under the MCOC Act. The said material is the confessional statement of the applicant, confessional statement of coaccused - Bhushan Satam and mobile printouts of the applicant.

12. Looking to the material on record, I find that there is sufficient material to attract the provisions of the MCOC Act and hence I do not think that this is a fit case to grant bail. Application is rejected.

(SMT.V.K.TAHILRAMANI,J.)